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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/565,758	04/18/2006	Joseph Noblett	5955300021	3003
32294 7590 04/13/2009 SQUIRE, SANDERS & DEMPSEY L.L.P. 8000 TOWERS CRESCENT DRIVE 14TH FLOOR VIENNA, VA 22182-6212				
EXAMINER				
NGUYEN, TRINH T				
ART UNIT		PAPER NUMBER		
3644				
MAIL DATE		DELIVERY MODE		
04/13/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/565,758

**Applicant(s)**

NOBLETT, JOSEPH

**Examiner**

Trinh T. Nguyen

**Art Unit**

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on RCE dated 3/18/09.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1.5 and 16-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1.5, 16-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination under 37 CFR 1.114 After Final Rejection***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/18/09 has been entered.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1,5,16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Graves (US 5482245) in view of Yocca (US 3987996).

For claim 1, Graves discloses a tree stand comprising a fluid reservoir (12) about a tree retaining member (10) including tree gripping means (76), wherein the tree gripping means comprise projections (76):

wherein the fluid reservoir (12) comprises a cylindrical or frustoconical member being closed at one end thereof by a base (note that reservoir 12 is a container and therefore it has a closed end and that the closed end serves as a base), wherein the

tree retaining member is connected to the base (note that the tree retaining member is connected to the base of the reservoir when the tree retaining member is inserted within the reservoir);

wherein the tree retaining member (10) comprises a substantially cylindrical hollow member and the tree gripping means comprising a plurality of projections (the end of member 76 where it protrudes inside member 70; see Figure 3) arranged on the interior surface of the tree retaining member.

Graves teaches most of the claimed invention except for mentioning that the tree retaining member is adapted to retain a tree inserted therein without using any moveable mechanical means in the form of screws or bolts by resisting lifting of a tree inserted therein relative to the tree stand.

Yocca teaches a similar tree stand as that of Graves wherein Yocca's tree stand includes tree retaining member (10) is adapted to retain a tree inserted therein without using any moveable mechanical means in the form of screws or bolts by resisting lifting of a tree inserted therein relative to the tree stand (see Figure 3, note that Yocca's tree retaining member (10) having tree gripping means comprises projections (30) wherein the tree gripping means allows a tree to be inserted within tree retaining member without using any moveable mechanical means in the form of screws or bolts by resisting lifting of a tree inserted therein relative to the tree stand). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the tree stand of Graves so as to include a tree retaining member having tree gripping means wherein the tree gripping means allows a tree to be inserted within

tree retaining member without using any moveable mechanical means in the form of screws or bolts by resisting lifting of a tree inserted therein relative to the tree stand, in a similar manner as taught in Yocca, so that the tree can be inserted and/or removed within the tree retaining member faster and easier.

For claim 5, Graves as modified by Yocca (emphasis on Graves) further disclose the tree retaining member (10) does not substantially protrude from the fluid reservoir (12) (see Figure 1).

For claim 16, Graves as modified by Yocca further disclose the projections substantially axially with the tree retaining member.

For claim 17, Graves as modified by Yocca further disclose the projections are arranged to maintain a degree of separation between a tree trunk inserted into the tree stand, and portions of the interior surface of the tree retaining member.

For claim 18, Graves as modified by Yocca (emphasis on Graves) further disclose the projections include a sharp or pointed portion (the end of member 76 where it protrudes inside member 70; see Figure 3) arranged in use to at least partially penetrate the trunk of a tree inserted into the tree retaining member.

For claim 19, Graves as modified by Yocca (emphasis on Graves) further disclose wherein the fluid reservoir (12) and tree retaining member (10) are in fluid communication (note that member 10 has a bottom member 80 wherein the bottom member 80 includes three triangular openings on the circumference in which causes member 10 to be in fluid communication with reservoir 12 when member 10 is inserted within reservoir 12; see Figures 3 and 4).

***Response to Arguments***

4. Applicant's arguments filed 3/18/09 have been fully considered but they are not persuasive.
5. Applicant argues that Graves fails to disclose the tree retaining member is adapted to retain a tree inserted therein without using any moveable mechanical means in the form of screws or bolts by resisting lifting of a tree inserted therein relative to the tree stand, Applicant's argument has been acknowledged. However, it is noted that Yocca teaches a similar tree stand as that of Graves wherein Yocca's tree stand includes tree retaining member (10) is adapted to retain a tree inserted therein without using any moveable mechanical means in the form of screws or bolts by resisting lifting of a tree inserted therein relative to the tree stand (see Figure 3, note that Yocca's tree retaining member (10) having tree gripping means comprises projections (30) wherein the tree gripping means allows a tree to be inserted within tree retaining member without using any moveable mechanical means in the form of screws or bolts by resisting lifting of a tree inserted therein relative to the tree stand). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the tree stand of Graves so as to include a tree retaining member having tree gripping means wherein the tree gripping means allows a tree to be inserted within tree retaining member without using any moveable mechanical means in the form of screws or bolts by resisting lifting of a tree inserted therein relative to the tree stand, in a similar manner as taught in Yocca, so that the tree can be inserted and/or removed within the tree retaining member faster and easier.

***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Trinh T. Nguyen whose telephone number is (571) 272-6906. The examiner can normally be reached on M-F (1:30 P.M to 10:00 P.M).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mansen can be reached on (571) 272-6608. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Trinh T Nguyen/  
Primary Examiner, Art Unit 3644  
4/9/09